Supreme Court, U.S.
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OFFICE

No._____

In The

Supreme Court of the United States

Gregory L. Hudson

Petitioner,

v.

Universal Pictures Corporation, Inc.,
Imagine Film Entertainment, Inc.,
Eddie Murphy, Dwight Meyers a/k/a,
Heavy D,
Brian Grazer, Robert Ramsey, and
Matthew Stone,

Respondents,

Petition for a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

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Petition For A Writ of Certiorari

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QUESTIONS PRESENTED

Whether the Second Circuit erred in affirming the District Court's *Sua Sponte* Summary Judgment in favor of the Appellees/Respondents and against the Appellant/Petitioner?

The Second Question Presented is Whether the Second Circuit departed from the accepted and usual course of judicial proceeding by sanctioning the Lower Court's refusal to grant the Petitioner leave to reopen discovery and amend the Complaint to include the stage play, entitled. Bronx House.

Whether the Second Circuit abused it's discretion by passing on and not ruling on the District Court's dismissal of a *properly served Default Judgment* against Dwight Meyers, a/k/a Heavy D?

Whether the Appellants/Petitioner's constitutional right to *due process* was violated during the proceedings of this case?

Whether the Second Circuit erred in affirming the District Court's dismissal of the *Unfair Competition claim against* the Appellees/Respondents?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), all of the parties appearing here and before the United States Court of Appeals for the Second Circuit are listed in caption (cover page).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioners state as follows: The Petitioner sued the Respondents as an independent artist and is not a corporation.

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CITATIONS OF THE OPINIONS BELOW

The *affirmation* (no opinion was offered) of the Court of Appeals is reported at and is reprinted in the Appendix to the Petition (Pet. App.) at ***App. A***. The *District Court's opinion* is reported at "For On Line Purposes Only" and is reprinted at Petitioner's (Pet. App.) at ***App B***. The *opinion for re-argument* of the District Court is reprinted in the Appendix to the Petition (Pet App.) at ***App. C***. *The judgment for Court costs* by the Court of Appeals is reprinted in the Appendix to the Petition (Pet. App.) at ***App. D***. The District Court's "Record on Appeal" for "lost Document is reprinted in the appendix to the Petition (Pet. App.) at ***App. E***. Table of Authorities is reprinted at *App. F.* (Pet. App.)

BASIS FOR JURISDICTION

This petition arises out of the Court of Appeals decision of April 1, 2004, affirming the trial Court's grant of *Sua Sponte* summary judgment in favor of the Defendants/Respondents and against the Plaintiff/Petitioner. Petitioner did not request for a Rehearing. The Court of Appeals entered its judgment on April 1, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1).

EXTENSION OF TIME

The Supreme Court of the United States granted Petitioner an extension of time (Sixty days) to file the *petition for a writ of certiorari*. Due date is August 29, 2005, signed by Justice GinsBerg.

STATUTES INVOLVED

This case involves revisions of the Copyright Act, 17 U.S.C. § 101, et seq.

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STATEMENT OF THE CASE

The Second Circuit Court of Appeals has granted a ***Sua Sponte Summary Judgment*** in favor of the Respondents and against the Petitioner, and in doing so, the Second Circuit has indeed; *decided important federal questions in ways that conflict with relevant decisions of this Court and other Circuits. Furthermore, the Second Circuit has departed so far from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the Eastern District Court of New York*; notwithstanding the fact that the Second Circuit disregarded decades of its own long established rules and case law by granting such a judgment, as to call for the immediate exercise of this Court's supervisory power.

To boot, upon review of this case, if the records still exist, this Court will find that the conduct engaged in by officers and representatives of the American Judicial System, including the Petitioner's own attorneys, is so egregious that the most conservative citizens of this country will be ashamed…and…this conduct militates any possibility of due process procedurally, substantially or otherwise.

This case by its very nature is one of the most important copyright infringement cases ever to reach this Court. For decades,

this Supreme Court of the United States, the Second Circuit and other Courts have "frowned upon Sua Sponte Summary Judgment" due to their inherent subjectivity (*See Hoehling v. Universal City Studios, 618 F .2d 972 (2nd Cir. 1980)*, and yet, the Second Circuit found reasons, in this case, to ignore its own long standing rule. The Second Circuit is required by law to review this case *De Novo,* but passed on it and simply "rubber stamped" the lower Court's decision. A simple "detailed comparison," as required by the law, of the *alleged substantial similarities* between both works, would have long since resolved this controversy; instead, the Second Circuit and the Eastern District "selectively" and "arbitrarily" viewed specific elements of the works in the light most favorable to the Respondents, which by all account is ***"Inverse Ratio."*** In other words, required the Defendants-Appellees to prove a degree of similarity lesser in quantum than the standard "substantial similarity" as required by the law for the moving party. *(See Shaw v. Lindheim, 919 f .2d 679, 680 (11th Cir. 1992), Beal v. Paramount Pictures Corporation, 20 F .3d 454; 1994 U.S. app. LEXIS 10376 11 Cir. 1994)*

The Respondents in this action have committed copyright infringement and, based upon the record and past history, a reasonable person can conclude that their business is built to capitalize on infringing the works of independent artists who they perceive cannot or do not have the resources to combat these massive entities and their world-class law firms. The Petitioner in this Case of, *Hudson v Universal Pictures Corporation, Inc., et al.*, has submitted more probative and substantial evidence of copying than any other case in modern copyright history, and yet, was denied the constitutional right to a trial by jury. All Courts have granted trials by jury, leave to amend Complaints or conducted detail comparisons of works to plaintiffs with far less evidence. *See Cerutti 1881 v. Cerutti Inc., No. 95 CIV 7782 WL 3350 (S.D.N.Y. Jan. 5, 1998),* a case Judge Mukasey (Chief Administrative Law Judge for the Southern District of New York, sitting by designation on appeal on *Hudson v. Universal Pictures*.) ruled on. In Cerutti v. Cerutti, the Plaintiff submitted only 8 Polariods as evidence.

The Petitioner is not implying that the Second Circuit or the Lower Court is incapable of determining whether there is a genuine

issue for trial; however, the photographs (***Exhibit #23- Plaintiff's Opposition Motion to Dismiss Defendants' Motion for Summary Judgment***) and the ***video-tapes*** have historically proven to influence the outcome of trials by jury. In this rare copyright infringement case of which so much visual evidence is presented, a jury and a finder of the facts (and not the Court) should evaluate the facts and evidence to determine, "if it is possible that a reasonable jury could find substantial similarity between both works." Photographs, video-tapes and paintings are subjectively perceived and interpreted on an individual basis.

> "We only state that reasonable minds could differ as to the issue and thus that summary judgment was improper." *See Twentieth Century-Fox, 715 f.2d at 1329.* "This is simply not a case in which the absence of similarities is so patent as to warrant summary judgment." *See Baxter v. MCA, Inc. 812 f. 2d 421 (9th Cir. 1987).*

Resolution of the questions presented here will largely determine; (a) the proper threshold that must be met before a party can move for summary judgment in copyright infringement cases; (b) the appropriate standards for determining substantial similarity between two dramatic works; (c) what constitutes a genuine, as opposed to a frivolous, issue of the material fact; (d) whether procedural due process for Pro Se Litigants can be disregarded, applied and/or shaped by the Courts and/or officers and representatives of the judicial system at their discretion; (e) and the proper standard for dismissing a properly served default judgment for "***good cause***."

The Second Circuit's decision threatens the very foundations of our copyright system, among other Circuits and Courts, with respect to how the standard for determining substantial similarity between "fictional dramatic works" and this decision militates a non-lawyer's right to ***fairness*** and ***integrity*** within the judicial system. "Unless these Respondents and those like them are held accountable and the law is applied equitably, the copyright law, procedural law and the entire Court system is useless...and "***the public reputation of judicial proceedings*** will continue to suffer black eyes and be the distrustful whipping boy in the eyes of the